

RETIREMENT SYSTEMS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending retirement and insurance provisions.

Highlighted Provisions:

This bill:

- ▶ clarifies that the Utah State Retirement Investment Fund may sue and be sued in its own name;
- ▶ requires a participating employer to provide certain records to the Utah Retirement Systems or its independent auditors;
- ▶ modifies when a domestic relations order must be received by the Utah Retirement Systems to be valid for determining benefits following a member's death;
- ▶ modifies cancellation, reinstatement, and calculation provisions for a retiree's retirement allowance affected by reemployment;
- ▶ requires a participating employer to maintain a list of employee exemptions instead of filing it annually with the Utah Retirement Systems; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

49-11-103, as renumbered and amended by Laws of Utah 2002, Chapter 250

49-11-301, as last amended by Laws of Utah 2016, Chapter 304

49-11-604, as last amended by Laws of Utah 2003, Chapter 240

49-11-612, as last amended by Laws of Utah 2015, Chapter 243

49-11-1204, as enacted by Laws of Utah 2016, Chapter 310

33 **49-12-203 (Effective 12/31/17)**, as last amended by Laws of Utah 2017, Chapters 20,
34 363 and last amended by Coordination Clause, Laws of Utah 2017, Chapter 382
35 **49-13-203 (Effective 12/31/17)**, as last amended by Laws of Utah 2017, Chapters 20,
36 363 and last amended by Coordination Clause, Laws of Utah 2017, Chapter 382
37 **49-14-501**, as last amended by Laws of Utah 2016, Chapter 84
38 **49-15-501**, as last amended by Laws of Utah 2016, Chapter 84
39 **49-22-205**, as last amended by Laws of Utah 2016, Chapter 227

41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **49-11-103** is amended to read:

43 **49-11-103. Purpose -- Liberal construction.**

44 (1) The purpose of this title is to establish:

- 45 (a) retirement systems and the Utah Governors' and Legislators' Retirement Plan for
46 members which provide:
- 47 (i) a uniform system of membership;
 - 48 (ii) retirement requirements;
 - 49 (iii) benefits for members;
 - 50 (iv) funding on an actuarially sound basis;
 - 51 (v) contributions; and
 - 52 (vi) economy and efficiency in public service; and
- 53 (b) a central administrative office and a board to administer the various systems, plans,
54 and programs established by the Legislature or the board.

55 (2) This title shall be liberally construed to provide maximum benefits and protections
56 consistent with sound fiduciary and actuarial [~~principals~~] principles.

57 Section 2. Section **49-11-301** is amended to read:

58 **49-11-301. Creation -- Board to act as trustees of the fund -- Commingling and**
59 **pooling of funds -- Interest earnings -- Funded ratio.**

60 (1) (a) There is created a common trust fund known as the "Utah State Retirement
61 Investment Fund" for the purpose of enlarging the investment base and simplifying investment
62 procedures and functions.

63 (b) The Utah State Retirement Investment Fund may sue and be sued in its own name.

(2) (a) The board shall act as trustees of the Utah State Retirement Investment Fund and, through the executive director, may commingle and pool the funds and investments of any system, plan, or program into the Utah State Retirement Investment Fund, if the principal amounts of the participating funds do not lose their individual identity and are maintained as separate trust funds on the books of the office.

(b) (i) In combining the investments of any fund, each of the participating funds shall be credited initially with its share of the total assets transferred to the Utah State Retirement Investment Fund.

(ii) The value of the transferred assets shall be calculated in accordance with generally accepted accounting principles.

(c) Subsequent transfers of additional capital from participating funds shall be credited similarly to its respective trust account.

(d) The income or principal or equity credit belonging to one participating fund may not be transferred to another, except for the purpose of:

(i) actuarially recommended transfers in order to adjust employer contribution rates for an employer that participates in both contributory and noncontributory systems; or

(ii) transfers which reflect the value of service credit accrued in different systems during a member's career.

(3) The assets of the funds are for the exclusive benefit of the members, participants, and covered individuals and may not be diverted or appropriated for any purpose other than that permitted by this title.

(4) (a) Interest and other earnings shall be credited to each participating fund on a pro rata equity position basis.

(b) (i) A portion of the interest and other earnings of the common trust fund may be credited to a reserve account within the Utah State Retirement Investment Fund to meet adverse experiences arising from investments or other contingencies.

(ii) Each participating fund shall retain its proportionate equity in the reserve account.

(5) (a) The actuarial funded ratio of the systems may reach and be maintained at 110%, as determined by the board's actuary using assumptions adopted by the board, before the board is required to certify a decrease in contribution rates.

(b) Except as provided in Subsection (6), the board may not increase contribution rates

to attain an actuarial funded ratio greater than 100%.

(6) (a) The cost of any amendment to this title shall be included in the final contribution rates adopted and certified by the board in accordance with Subsections 49-11-102(14) and 49-11-203(1)(l).

(b) If a preliminary certified contribution rate approved by the board prior to an annual general session or special session of the Legislature was maintained at a previous year's level that is higher than the contribution rate calculated by the board's actuary for that year in accordance with Subsection (5)(a), the board's final certified contribution rate shall be the sum of the actuarially determined costs from any amendment to this title during the general session or special session and the preliminary certified contribution rate.

Section 3. Section **49-11-604** is amended to read:

49-11-604. Office audits of participating employers -- Penalties for failure to comply.

(1) (a) The office may perform an on-site compliance ~~[audits]~~ audit of a participating ~~[employers]~~ employer to determine compliance with reporting, contribution, and certification requirements under this title.

(b) The office or its independent auditor may perform an on-site compliance audit of a participating employer or request records to be provided by the participating employer, including records required to complete:

(i) audited financial statements;

(ii) schedules of employer allocations and pension reporting in accordance with Governmental Accounting Standards Board statements; and

(iii) service organizational controls reports.

~~[(b)]~~ (c) The office may request records to be provided by the participating employer at the time of the audit.

~~[(c)]~~ (d) Audits shall be conducted at the sole discretion of the office after reasonable notice to the participating employer of at least five working days.

~~[(d)]~~ (e) The participating employer shall extract and provide records as requested by the office in an appropriate, organized, and usable format.

~~[(e)]~~ (f) Failure of a participating employer to allow access, provide records, or comply in any way with an office audit shall result in the participating employer being liable to the

126 office for:

127 (i) any liabilities and expenses, including administrative expenses and travel expenses,
128 resulting from the participating employer's failure to comply with the audit; and

129 (ii) a penalty equal to 1% of the participating employer's last month's contributions.

130 (2) If the audit reveals a participating employer's failure to make contributions as
131 required under Section 49-11-601, a failure to maintain records as required under Section
132 49-11-602, or a failure to correctly report or certify eligibility as required under Section
133 49-11-603, the participating employer shall reimburse the office for the cost of the audit.

134 (3) If the audit reveals that an incorrect benefit has been paid by the office to a
135 member, participant, alternate payee, or beneficiary due to a participating employer's failure to
136 comply with the requirements of Section 49-11-601, 49-11-602, or 49-11-603, in addition to
137 the liabilities contained in Subsection (2), the participating employer shall be liable to the
138 office for the following:

139 (a) the actuarial cost of correcting the incorrect benefit; and

140 (b) administrative expenses.

141 (4) The executive director may waive all or any part of the interest, penalties, expenses,
142 and fees if the executive director finds there were extenuating circumstances surrounding the
143 participating employer's failure to comply with this section.

144 Section 4. Section **49-11-612** is amended to read:

145 **49-11-612. Domestic relations order benefits -- Nonassignability of benefits or**
146 **payments -- Exemption from legal process.**

147 (1) As used in this section, "domestic relations order benefits" means:

148 (a) an allowance;

149 (b) a defined contribution account established under:

150 (i) Part 8, Defined Contribution Plans;

151 (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

152 (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement
153 Act;

154 (c) a continuing monthly death benefit established under:

155 (i) Chapter 14, Part 5, Death Benefit;

156 (ii) Chapter 15, Part 5, Death Benefit;

- (iii) Chapter 16, Part 5, Death Benefit;
- (iv) Chapter 17, Part 5, Death Benefit;
- (v) Chapter 18, Part 5, Death Benefit; or
- (vi) Chapter 19, Part 5, Death Benefit;
- (d) a lump sum death benefit provided under:

- (i) Chapter 12, Part 5, Death Benefit;
- (ii) Chapter 13, Part 5, Death Benefit;
- (iii) Chapter 22, Part 5, Death Benefit; or
- (iv) Chapter 23, Part 5, Death Benefit; or
- (e) a refund of member contributions upon termination.

(2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree, participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or any other retirement right accrued or accruing under this title and the assets of the funds created by this title are not subject to alienation or assignment by the member, retiree, participant, or their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal or equitable process.

(3) (a) The office may, upon the request of the retiree, deduct from the retiree's allowance, insurance premiums or other dues payable on behalf of the retiree, but only to those entities that have received the deductions prior to February 1, 2002.

(b) The office may, upon the request of a retiree of a public safety or firefighter system, deduct insurance premiums from the retiree's allowance.

(4) (a) The office shall provide for the division of domestic relations order benefits with former spouses and family members under an order of a court of competent jurisdiction with respect to domestic relations matters on file with the office.

(b) The court order shall specify the manner in which the domestic relations order benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

(c) Domestic relations order benefits split under a domestic relations order are subject to the following:

- (i) the amount to be paid or the period for which payments shall be made under the original domestic relations order may not be altered if the alteration affects the actuarial calculation of the allowance;

(ii) payments to an alternate payee shall begin at the time the member or beneficiary begins receiving payments; and

(iii) the alternate payee shall receive payments in the same form as allowances received by the member or beneficiary.

(d) ~~(i) [To]~~ Except as provided under Subsection (4)(d)(ii), to be valid, a court order under this section must be [received by the office within 12 months of the death of the member] on file with the office before the member's date of death.

(ii) A court order under this section received by the office after the member's date of death shall be considered valid if it is received in good order before benefits relating to the member's death are paid or settled.

(e) A court order under this section may not require and may not be interpreted in any way to require the office to provide any type of benefit or any option not otherwise provided under this title.

(5) In accordance with federal law, the board may deduct the required amount from any benefit, payment, or other right accrued or accruing to any member or beneficiary of a system, plan, or program under this title to offset any amount that member or beneficiary owes to a system, plan, or program administered by the board.

(6) The board shall make rules to implement this section.

Section 5. Section **49-11-1204** is amended to read:

49-11-1204. General restrictions -- Election following one-year separation -- Amortization rate.

(1) A retiree may not for the same period of reemployment:

(a) (i) earn additional service credit; or

(ii) receive any retirement related contribution from a participating employer; and

(b) receive a retirement allowance.

(2) Except as provided under Section 49-11-1205, the office shall cancel the retirement allowance of a retiree if the reemployment with a participating employer begins within one year of the retiree's retirement date.

(3) If a reemployed retiree has completed the one-year separation from employment with a participating employer required under Subsection (2), the retiree may elect to:

(a) cancel the retiree's retirement allowance and instead earn additional service credit in

accordance with this title; or

(b) continue to receive the retiree's retirement allowance, forfeit earning additional service credit, and forfeit any retirement-related contribution from the participating employer that reemployed the retiree.

(4) (a) ~~[If the office receives notice of the election of a reemployed retiree under Subsection (3)(a), the office shall immediately cancel the retiree's retirement allowance. (b) (i) If the retiree under Subsection (4)(a)]~~ If a retiree's retirement allowance is cancelled and the retiree is eligible for retirement coverage in [the] a reemployed position, the office shall reinstate the retiree to active member status on the first day of the month following the date of the employee's [election] eligible reemployment.

~~[(ii)]~~ (b) Except as provided under Subsection (4)(c), if the retiree is not otherwise eligible for retirement coverage in the reemployed position, the participating employer that reemploys the retiree shall contribute the amortization rate to the office on behalf of the retiree.

(c) A participating employer that reemploys a retiree in accordance with Subsection 49-11-1205(1) is not required to contribute the amortization rate to the office.

(5) (a) For a retiree under Subsection (4)~~[(b)]~~(a) who retires within two years from the date of reemployment, the office:

(i) may not recalculate a retirement benefit for the retiree; and

(ii) shall resume the allowance that was being paid to the retiree at the time of the cancellation.

(b) Subject to Subsection (1), for a retiree who is reinstated to active membership under Subsection (4)~~[(b)]~~(a) and retires two or more years after the date of reinstatement to active membership, the office shall:

(i) resume the allowance that was being paid at the time of cancellation; and

(ii) calculate an additional allowance for the retiree based on the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.

Section 6. Section **49-12-203 (Effective 12/31/17)** is amended to read:

49-12-203 (Effective 12/31/17). Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment

status is temporary in nature due to the nature or the type of work to be performed;

(b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents, or the Board of Directors of each technical college for an employee of each technical college, during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an executive department head of the state, a member of the State Tax Commission, the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;

(e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(f) an employee who is employed on or after July 1, 2009, with an employer that has elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection 49-12-202(2)(c);

(g) an employee who is employed on or after July 1, 2014, with an employer that has elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection 49-12-202(2)(d);

(h) an employee who is employed with a withdrawing entity that has elected under Section 49-11-623, prior to January 1, 2017, to exclude:

(i) new employees from participation in this system under Subsection 49-11-623(3)(a);

or

(ii) all employees from participation in this system under Subsection 49-11-623(3)(b);

or

(i) an employee described in Subsection (1)(i)(i) or (ii) who is employed with a withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to exclude:

(i) new employees from participation in this system under Subsection 49-11-624(3)(a);

or

(ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

(3) (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

(b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before July 1, 2009 is not affected under Subsection (1)(f).

(c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service credit earned by an employee under this chapter before July 1, 2014, is not affected under Subsection (1)(g).

(4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;

(d) an employee of the Governor's Office of Management and Budget;

(e) an employee of the Governor's Office of Economic Development;

(f) an employee of the Commission on Criminal and Juvenile Justice;

(g) an employee of the Governor's Office;

(h) an employee of the State Auditor's Office;

(i) an employee of the State Treasurer's Office;

(j) any other member who is permitted to make an election under Section 49-11-406;

(k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee; and

(l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members.

(5) (a) Each participating employer shall prepare and maintain a list designating those positions eligible for exemption under Subsection (4).

(b) An employee may not be exempted unless the employee is employed in an exempted position designated by the participating employer.

(6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the eligible employees of the municipality, county, or political subdivision, whichever is less.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

(7) Each participating employer shall:

(a) ~~[file]~~ maintain a list of employee exemptions ~~[annually with the office]~~; and

(b) update the employee exemptions in the event of any change.

(8) The office may make rules to implement this section.

Section 7. Section **49-13-203 (Effective 12/31/17)** is amended to read:

49-13-203 (Effective 12/31/17). Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;

(b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents, or the Board of Directors

of each technical college for an employee of each technical college, during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;

(e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(f) an employee who is employed with an employer that has elected to be excluded from participation in this system under Subsection 49-13-202(5), effective on or after the date of the employer's election under Subsection 49-13-202(5);

(g) an employee who is employed with a withdrawing entity that has elected under Section 49-11-623, prior to January 1, 2017, to exclude:

(i) new employees from participation in this system under Subsection 49-11-623(3)(a);
or

(ii) all employees from participation in this system under Subsection 49-11-623(3)(b);
or

(h) an employee described in Subsection (1)(h)(i) or (ii) who is employed with a withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to exclude:

(i) new employees from participation in this system under Subsection 49-11-624(3)(a);
or

(ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

(3) (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

(b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before the date of the election under Subsection 49-13-202(5) is not affected under Subsection (1)(f).

(4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;

(d) an employee of the Governor's Office of Management and Budget;

(e) an employee of the Governor's Office of Economic Development;

(f) an employee of the Commission on Criminal and Juvenile Justice;

(g) an employee of the Governor's Office;

(h) an employee of the State Auditor's Office;

(i) an employee of the State Treasurer's Office;

(j) any other member who is permitted to make an election under Section 49-11-406;

(k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee;

(l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and

(m) an employee of the Utah Science Technology and Research Initiative created under

Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

(5) (a) Each participating employer shall prepare and maintain a list designating those positions eligible for exemption under Subsection (4).

(b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer.

(6) (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the eligible employees of the municipality, county, or political subdivision, whichever is less.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

(7) Each participating employer shall:

(a) ~~[file]~~ maintain a list of employee exemptions ~~[annually with the office]~~; and

(b) update the employee exemptions in the event of any change.

(8) The office may make rules to implement this section.

Section 8. Section **49-14-501** is amended to read:

49-14-501. Death of active member in Division A -- Payment of benefits.

(1) If an active member of this system enrolled in Division A under Section 49-14-301 dies, benefits are payable as follows:

(a) If the death is classified by the office as a line-of-duty death, the surviving spouse shall receive a lump sum equal to six months of the active member's final average salary and an allowance equal to 30% of the deceased member's final average monthly salary.

(b) If the death is not classified by the office as a line-of-duty death, benefits are payable as follows:

(i) If the member has accrued less than 10 years of public safety service credit, the ~~[beneficiary]~~ surviving spouse shall receive the sum of \$1,000 or a refund of the member's member contributions, whichever is greater.

(ii) If the member has accrued 10 or more years of public safety service credit at the time of death, the surviving spouse shall receive the sum of \$500, plus an allowance equal to 2% of the member's final average monthly salary for each year of service credit accrued by the member up to a maximum of 30% of the member's final average monthly salary.

(2) Except as provided under Subsection (1)(b)(i), benefits are not payable to minor children of members covered under Division A.

(3) If a benefit is not distributed under this section, and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

(4) (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.

(b) The allowance shall begin on the first day of the month following the month in which the:

(i) member died, if the application is received by the office within 90 days of the member's death; or

(ii) application is received by the office, if the application is received by the office more than 90 days after the member's death.

Section 9. Section **49-15-501** is amended to read:

49-15-501. Death of active member in Division A -- Payment of benefits.

(1) If an active member of this system enrolled in Division A under Section 49-15-301 dies, benefits are payable as follows:

(a) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:

(i) If the member has accrued less than 20 years of public safety service credit, the surviving spouse shall receive a lump sum equal to six months of the active member's final average salary and an allowance equal to 30% of the member's final average monthly salary.

(ii) If the member has accrued 20 or more years of public safety service credit, the member shall be considered to have retired with an allowance calculated under Section 49-15-402 and the surviving spouse shall receive the death benefit payable to a surviving spouse under Section 49-15-504.

(b) If the death is not classified as a line-of-duty death by the office, benefits are payable as follows:

(i) If the member has accrued less than 10 years of public safety service credit, the ~~[beneficiary]~~ surviving spouse shall receive the sum of \$1,000 or a refund of the member's member contributions, whichever is greater.

(ii) If the member has accrued 10 or more years, but less than 20 years of public safety

service credit at the time of death, the surviving spouse shall receive the sum of \$500, plus an allowance equal to 2% of the member's final average monthly salary for each year of service credit accrued by the member up to a maximum of 30% of the member's final average monthly salary.

(iii) If the member has accrued 20 or more years of public safety service credit, the benefit shall be calculated as provided in Subsection (1)(a)(ii).

(2) Except as provided under Subsection (1)(b)(i), benefits are not payable to minor children under Division A.

(3) If a benefit is not distributed under this section, and the member has designated a beneficiary, the member's member contribution shall be paid to the beneficiary.

(4) (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.

(b) The allowance shall begin on the first day of the month following the month in which the:

(i) member died, if the application is received by the office within 90 days of the member's death; or

(ii) application is received by the office, if the application is received by the office more than 90 days after the member's death.

Section 10. Section **49-22-205** is amended to read:

49-22-205. Exemptions from participation in system.

(1) Upon filing a written request for exemption with the office, the following employees are exempt from participation in the system as provided in this section:

(a) an executive department head of the state;

(b) a member of the State Tax Commission;

(c) a member of the Public Service Commission;

(d) a member of a full-time or part-time board or commission;

(e) an employee of the Governor's Office of Management and Budget;

(f) an employee of the Governor's Office of Economic Development;

(g) an employee of the Commission on Criminal and Juvenile Justice;

(h) an employee of the Governor's Office;

(i) an employee of the State Auditor's Office;

(j) an employee of the State Treasurer's Office;

(k) any other member who is permitted to make an election under Section 49-11-406;

(l) a person appointed as a city manager or appointed as a city administrator or another at-will employee of a municipality, county, or other political subdivision;

(m) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and

(n) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

(2) (a) A participating employer shall prepare and maintain a list designating those positions eligible for exemption under Subsection (1).

(b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (1).

(3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the eligible employees of the municipality, county, or political subdivision, whichever is less.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

(4) Each participating employer shall:

(a) [~~file each employee exemption annually with the office~~] maintain a list of employee exemptions; and

(b) update an employee exemption in the event of any change.

(5) Beginning on the effective date of the exemption for an employee who elects to be exempt in accordance with Subsection (1):

(a) for a member of the Tier II defined contribution plan:

(i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-22-401, except that the nonelective contribution is exempt from the vesting requirements of Subsection 49-22-401(3)(a); and

(ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

(b) for a member of the Tier II hybrid retirement system:

(i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-22-401, except that the contribution is exempt from the vesting requirements of Subsection 49-22-401(3)(a);

(ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

(iii) the member is not eligible for additional service credit in the system.

(6) If an employee who is a member of the Tier II hybrid retirement system subsequently revokes the election of exemption made under Subsection (1), the provisions described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

(7) (a) All employer contributions made on behalf of an employee shall be invested in accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election period under Subsection 49-22-201(2)(c) is expired if the employee:

(i) elects to be exempt in accordance with Subsection (1); and

(ii) continues employment with the participating employer through the one-year election period under Subsection 49-22-201(2)(c).

(b) An employee is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses if the employee:

(i) elects to be exempt in accordance with Subsection (1); and

(ii) terminates employment prior to the one-year election period under Subsection 49-22-201(2)(c).

(8) (a) The office shall make rules to implement this section.

(b) The rules made under this Subsection (8) shall include provisions to allow the exemption provided under Subsection (1) to apply to all contributions made beginning on or after July 1, 2011, on behalf of an exempted employee who began the employment before May 8, 2012.

Section 11. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

